

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Amar K. Pati	Art Unit : 2624
Patent No. : 7,454,067	Examiner : Aaron W. Carter
Issue Date : November 18, 2008	Conf. No. : 7096
Serial No. : 10/661,078	
Filed : September 12, 2003	
Title : SYMBOL CLASSIFICATION DEPENDING ON CLUSTER SHAPES IN DIFFERENCE IMAGE	

MAILSTOP OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed October 29, 2008, for the above-referenced application indicates that the Patent Term Adjustment at issuance is 1039 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 1041 days to 1467 days, and to increase Total PTA from 1039 to 1465 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) The PTO mailed a delayed 14-month first non-final Office Action on July 13, 2007, thereby according a PTO Delay of 973 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 2) Applicant filed a response to the non-final Office Action on October 15, 2007 (received at the PTO on October 15, 2007). Applicant was accorded a delay of 2

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days for the delayed response. Applicant does not dispute herein this patent term adjustment for this Applicant Delay.

- 3) The PTO mailed a delayed final Office Action on April 23, 2008, thereby according a PTO Delay of 68 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay".
- 4) The application was filed on September 12, 2003 and the patent issued on November 18, 2008, more than three years later. No PTO Delay was calculated for issuance of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 426 days, as outlined further below.

REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can "overlap" is if they occur on the same day, and if an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. "A Delays" are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years," and that "B delay" begins once the PTO has failed to issue a patent within three years, not before.

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In the current PTA calculation, the Office has only given credit for the larger of "A Delay" or "B Delay," rather than the combined sum of "A Delay" and "B Delay" (which does not include any days after three years from filing where "A" and "B" delays overlap).

In this patent, "A Delay" should be calculated as 1041 days, and "B Delay" should be calculated as 426 days (798 days after three years from filing minus 372 days of overlapping A delay). Thus, the total PTO Delay should be calculated as 1467 days.

In consideration of the events described above, Applicant believes the PTA calculation of 1039 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

- 1) Total PTO Delay should be calculated as 1467 days;
- 2) Total Applicant Delay should be calculated as 2 days; and
- 3) Total PTA should be calculated as 1465 days.

Applicant notes that this patent is not subject to a terminal disclaimer.

Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to deposit account 06-1050, referencing the attorney number shown above.

Respectfully submitted,

Date: January 15, 2009

/William E. Hunter/

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